

(d) of the Exchange Act offered under Regulation A to deliver for a period of 90 days after the commencement of the offering an offering circular to any purchaser who has not previously received an offering circular.<sup>2</sup>

The Commission believes that the same considerations that led Congress to adopt amendments to section 4(3) of the Act requiring dealers to deliver prospectuses during a period of 90 days after the effective date of a registration statement relating to securities of issuers who had not previously sold securities pursuant to an effective registration statement, should apply to delivery of offering circulars by dealers.<sup>3</sup> Failure of a dealer to comply with this provision will not affect the exemption available to the issuer, but would result in the dealer's transaction not being exempt pursuant to Regulation A.

The Commission also has adopted a new paragraph (h) to Rule 256 which will require issuers or underwriters to provide reasonable quantities of the offering circular to dealers on request.

**Commission Action.** Pursuant to the authority set forth in sections 3(b) and 19(a) of the Securities Act of 1933, the Securities and Exchange Commission hereby amends § 230.256 of Chapter II of Title 17 of the Code of Federal Regulations by amending subparagraph (a) (2) and adding new paragraphs (g) and (h) all as set forth below:<sup>4</sup>

<sup>2</sup>The Report, Part 1 at page 558, recommends extension of the period during which dealers are required to deliver prospectuses to 90 days for "first issues of common stock . . . ." and the application of that requirement to offering circulars under Regulation A. The record in the Hot Issue Investigation supports that recommendation.

<sup>3</sup>The Senate Report on the 1964 Amendments to the Federal securities laws quotes the Special Study's Report, Part 1, at page 556:

Persons who bought in the aftermarket often were less sophisticated and more susceptible to the allure of publicity and rumor about "hot issues." Those persons, who frequently purchased at premium prices, probably needed the benefits of information contained in the prospectuses more than the original distributees. and then states:

Although the proposed amendment to section 4(1), which was recommended by the Special Study will not provide a cure-all for the "hot issues" problem, it will make information available to investors during the course of active solicitation and trading of new issues in the after market and assist in the establishment of more orderly trading in such securities.

Senate Report No. 379, 88th Congress, 1st Sess. (July 24, 1963), 28. The Special Study also observed that while the requirement with respect to delivery of preliminary prospectuses "guarantees that original purchasers of registered issues receive the preliminary prospectuses, it does not insure delivery of any prospectuses to purchasers in the aftermarket who may be in greater need of the disclosure than are original distributees." Report, Part 1, pages 548 and 549.

<sup>4</sup>All changes from the amendments as proposed for comment in 37 FR 16008 are hereinafter italicized.

Paragraph (a) (2) of Rule 256 is amended as follows:

**§ 230.256 Filing and use of the offering circular.**

(a) . . . .

(2) No securities of such issuer shall be sold under this regulation unless such an offering circular is furnished to the person to whom the securities are expected to be sold at least 48 hours prior to the mailing of the confirmation of sale to such person, or is sent to such person under such circumstances that it would normally be received by him 48 hours prior to his receipt of confirmation of the sale; *Provided, however*, If the issuer is required to file reports pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, the offering circular may be furnished with or prior to the confirmation of sale.

(g) Sales by a dealer (including an underwriter no longer acting as an underwriter in respect of the security involved in such transaction) of securities of an issuer not subject, immediately prior to the time of filing of notification on § 239.90 [Form 1-A] to the provisions of Sections 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, offered pursuant to this regulation and taking place prior to the expiration of ninety days after the first date upon which the securities were bona fide offered to the public, shall not be exempt pursuant to this regulation unless: (1) the dealer furnishes a copy of the then current offering circular to the purchaser prior to or with the purchaser's receipt of the confirmation of the sale; or (2) the offering circular has previously been mailed or delivered to such purchaser. Failure by a dealer to comply with the provisions of this subparagraph shall not otherwise affect the availability of the exemption for any other person, including the aggregate amount of securities exempted pursuant to § 230.254.

(h) The issuer or, if there is an underwriter, the underwriter shall provide reasonable quantities of copies of the offering circular to any dealer on request prior to the expiration of ninety days after the first date upon which securities of such issuer were bona fide offered to the public pursuant to this regulation.

The foregoing amendments to Rule 256 shall be effective on August 1, 1973 and shall apply with respect to all offerings exempt pursuant to Regulation A commenced on or after that date.

(Secs. 3(b), 19(a), 48 Stat. 75, 85, Sec. 209, 48 Stat. 908, c.122, 59 Stat. 167, Pub. L. 91-565, 84 Stat. 1480, 15 U.S.C. 77c(b), 77s(a)).

By the Commission.

[SEAL]

SHIRLEY E. HOLLIS,  
Recording Secretary.

JUNE 1, 1973.

[FR Doc.73-13110 Filed 6-28-73;8:45 am]

[Release 5396]

**PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER**

**Preparation and Filing of Registration Statements**

The Securities and Exchange Commission announced today the adoption of certain amendments to the Guides for Preparation and Filing of Registration Statements under the Securities Act of 1933 (Securities Act Release 4936, as amended) ("Guides") [33 FR 18617]. These amendments were first published in Securities Act Release 5279 (July 26, 1972) [37 FR 16010] as part of the series of proposals resulting from the Commission's Public Investigation in the Matter of the Hot Issues Securities Markets intended to improve the informational ("Hot Issues Investigation")<sup>1</sup> and are intended to improve the informational content and dissemination of disclosure documents required to be filed in connection with public offerings of securities of new ventures or first-time registrants. Some of the amendments, however, are not limited to new ventures or new registrants and apply to any issuer filing on Form S-1 [17 CFR 239.11] or S-2 [17 CFR 239.12].

First, the Commission has adopted new Guide 59, "Summary of Disclosure in the Prospectus," requiring that prospectuses contained in a registration statement on Form S-1 or S-2 filed by any registrant include, immediately following the cover page, a summary of the contents of the prospectus, highlighting the salient features of the offering with appropriate cross references to the prospectus. This summary should be placed on the first page of text and not on the inside cover page which contains the table of contents. In addition, the Guide would require that summary financial information be included in the summary, but only for registration statements on Form S-1.

Second, Guide 16, "Disclosure with respect to Newly Organized Underwriting Firms," has been amended to change the title to "Underwriters' Experience and Due Diligence Inquiry," and to add a paragraph relating specifically to the due diligence inquiry of underwriters of new or speculative issues. Information developed in the Hot Issues Investigation and contained in the Special Study of the Securities Markets<sup>2</sup> indicates that new and inexperienced underwriters often underwrite new or speculative issues, and that certain of these underwriters fail to make reasonable investigations to assure that registration statements contain full and fair disclosure. The new paragraph of Guide 16 provides that the staff may request that an underwriter

<sup>1</sup> File No. 4-148.

<sup>2</sup> Report of Special Study of the Securities Markets, Part 1, at 514 (1963).



of a new or speculative issue furnish supplemental information not as a part of the registration statement to explain the steps taken to verify the information appearing in the registration statement and to determine whether additional disclosure is necessary in the prospectus.<sup>3</sup>

Third, a new paragraph has been added to Guide 5, "Preparation of Prospectuses," which notes that stock phrases or "boiler plate" relating to subjects such as the company's chances of success or competition often do not provide meaningful disclosure. Such statements, therefore, should usually be accompanied by a brief explanation of the basis for the statement and the effect such conditions may have on the business of the registrant. As proposed in Release 33-5279, this paragraph also related to certain statements with respect to the status of material litigation. The Commission has determined to delete such reference since it might require disclosure of litigation strategy and defenses.

Fourth, another new paragraph has been added to Guide 5 to require disclosure in preliminary prospectuses actually circulated of the estimated maximum offering price and number of shares or other units to be offered or, with respect to debt securities, the estimated principal amount to be offered for first time public offerings, with appropriate caveats as to the reliability of such estimates. The estimated maximum offering price may be higher or lower than the estimated maximum offering price required to be stated for purposes of determining the filing fee pursuant to Section 6 of the Securities Act of 1933. The estimate required by Guide 5 may be included initially in a preliminary prospectus filed as an amendment after the initial filing of the registration statement and factors affecting the estimate may have changed between the date of filing and that date.<sup>4</sup> This amendment

to Guide 5 results from information obtained in the Commission's Hot Issue Investigation, which indicated both the necessity for and feasibility of having pricing information disclosed in preliminary prospectuses circulated in connection with public offerings of securities by issuers that are not subject to the reporting provisions of sections 13(a) and 15(d) of the Securities Exchange Act of 1934 (Exchange Act).

Fifth, the Commission calls to the attention of registrants and those persons who assist them in preparing registration statements that the registration forms in general use for first time registrants require disclosure of the method by which the price of the offering is to be determined.<sup>5</sup> Prospectuses often contain the statement that "the initial public offering price has been arbitrarily determined by the company" or that "such price has been established by negotiations between the underwriter and the registrant." An additional paragraph has been added to Guide 5 requiring that such bare bones statements be amplified by disclosure of factors that were considered in establishing the offering price and also requiring an estimate of the value placed on outstanding securities of the registrant as a result of the estimated offering price. The Commission also has observed that the pricing of securities to be offered by new ventures often results in an aggregate value being placed on the outstanding shares of the issuer which bears little or no relationship to the issuer's assets, earnings or other criteria of value. Therefore, a paragraph has been added to Guide 5 to require disclosure, if true, that such aggregate value has no relationship to such criteria.

The amendments adopted today are similar in substance to those proposed in Release 5279. However, they have been revised in various respects in light of comments received from the public. Two revisions especially should be noted: first, the requirement that the summary contain a description of the issuer's business plans has been revised to apply only to those issuers required to disclose such plans in filings on Form S-1 or S-2 (See Securities Act Release 5395, issued today) [38 F.R. 17202] and second, summarization of material risks in the summary statement will not be required where a company includes an introductory statement containing such information pursuant to Guide 6 of the Guides.

**Commission action.** Pursuant to authority set forth in sections 6, 7, 10 and 19(a) of the Securities Act of 1933, the Commission hereby adopts Guide 59 and amends Guides 5 and 16 of section 231 of Chapter II of Title 17 of the Code of

the filing fee be based on a "bona fide estimate of the maximum offering price." For purposes of Rule 457(a) and the amendment to Guide 5, it should be noted that although the two estimates might not be the same, the estimates used in both instances must be bona fide.

<sup>3</sup> Form S-1 [17 CFR 239.11], Item 1, Distribution Spread, Instruction 2; and Form S-2 [17 CFR 239.12], Item 1, Distribution Spread, Instruction 2.

Federal Regulations all as set forth below:

#### I. Guide 59. Summary of disclosure in the prospectus.

Immediately following the cover page of the prospectus contained in registration statements on Form S-1 or S-2, there shall be set forth a short summary of the contents of the prospectus highlighting the salient features of the offering with appropriate cross reference to more detailed discussions elsewhere in the prospectus. It should include items such as:

a. A brief description of the registrant's business;

b. If the registrant has not previously filed a registration statement under the Securities Act or under the Securities Exchange Act of 1934 and has not received revenues from operations for each of the three fiscal years immediately prior to the filing of the registration statement, a brief description of the information relating to registrant's plan of operation required by Instruction 9 to Item 9(a) of Form S-1 or Instruction 8 to Item 4(a) of Form S-2;

c. A brief statement of the use of the proceeds of the offering;

d. Where the registrant is not required to provide an introductory statement pursuant to Guide 6, a brief statement of any material risks connected with the offering such as the registrant's inability to obtain necessary additional financing or the possibility that its products may not be marketed successfully. If the registrant is required to provide an introductory statement pursuant to Guide 6, the summary should include a cross reference to such statement; and

e. Summary financial information in registration statements on Form S-1, including a concise statement of any qualifications in the auditor's opinion. This should be presented in substantially the following form (where necessary to indicate a material adverse trend, corresponding information should also be provided for the previous year or years). Registrant should be prepared to update the summary financial information.

#### FINANCIAL INFORMATION (SEE PP. AND )

	Year Ended 19	Quarter ended 19	19
<b>INCOME STATEMENT</b>			
Net Sales and Operating Revenues and other Revenues	\$	\$	\$
Income before extraordinary items	\$	\$	\$
Net income	\$	\$	\$
<b>BALANCE SHEET (at end of period):</b>			
Working Capital	\$	\$	\$
Total assets	\$	\$	\$
Total assets less deferred research and development charges and excess of cost of assets acquired over book value	\$	\$	\$
Total indebtedness	\$	\$	\$
Shareholders' equity	\$	\$	\$
<b>PER SHARE*</b>			
Income per common share before extraordinary items	\$	\$	\$
Extraordinary items	\$	\$	\$
Net income per common share (and common share equivalents, if applicable)	\$	\$	\$
Net income per share on a fully diluted basis	\$	\$	\$

\*Average number of shares of common stock outstanding during each period was — (as adjusted to given effect to stock dividends or stock splits).

#### II. Guide 16. Underwriters' experience and due diligence inquiry.

<sup>3</sup> Securities Act Release No. 5275 (July 26, 1972) [37 FR 16011] contains an extensive discussion of the obligations of underwriters to make such investigations.

<sup>4</sup> The Commission's authority to accelerate the effective date of a registration statement pursuant to section 8(a) of the Act requires the Commission to have "due regard to the adequacy of the information respecting the issuer theretofore available to the public \* \* \*." The Commission has indicated that, as a condition of acceleration of a registration statement of an issuer not subject to section 13(a) or 15(d) of the Exchange Act, prospectuses should be furnished to persons to whom an underwriter expects to confirm sales at least 48 hours in advance of mailing of confirmations. See Securities Act Release No. 4968 (April 24, 1968) [34 FR 7235] and Rule 400 [17 CFR 230.400] under the Act. The Special Study of Securities Markets in Part I of its Report at page 548 observed that the requirement of distributing prospectuses to each customer to whom underwriters expect to confirm "has the desirable effect of insuring dissemination to investors of information in the statutory prospectus prior to the effective date and prior to the time that investors are committed to their purchases." Reference also is made to Rule 457(a) [17 CFR 230.457(a)] under the Securities Act which requires that the computation of



Guide No. 16 is amended by adding thereto, the following paragraph:

Where a new or speculative issue of securities is being registered, the Division may request the underwriter of the issue to explain supplementally the steps taken to verify the disclosure in the prospectus and the Division will take into consideration such information in determining what action is to be taken in processing the registration statement, including whether additional disclosure is required.

### III. Guide 5. Preparation of prospectuses.

Guide No. 5 is amended by adding thereto, the following paragraphs:

Stock phrases such as "There can be no assurance that the registrant will succeed in developing a commercial market for its product" or "A substantial number of companies that are engaged in the same business as the registrant have greater financial resources, experience and are better known to the public than registrant" or "In the opinion of management the unfavorable determination of any pending litigation would have no material effect on the business or financial condition of the company," may not provide meaningful disclosure unless accompanied by a brief explanation of the basis for such statements or the effect such conditions may have on the business of the registrant.

In addition, for registrants not subject to the reporting provisions of sections 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, immediately prior to the filing of the registration statement, the disclosure on the cover page of a preliminary prospectus that is circulated should include a bona fide estimate of the range of the maximum offering price and maximum number of shares or other units of securities to be offered, or a bona fide estimate of the principal amount of debt securities to be offered.

Such statements as "The initial public offering price has been determined through negotiations between the underwriter and the company," do not provide meaningful disclosure. Accordingly, such "bare bones" disclosure should be amplified by disclosing the various factors that were considered in determining the price for the securities to be offered. There also should be included, with appropriate cross reference to disclosure elsewhere in the prospectus, a statement of the value placed on the outstanding securities of the registrant as a result of such estimated price with appropriate caveats as to the reliability of such estimates. Such disclosure also should include, if true, reference to the fact that such value may bear no relationship to the assets, earnings or other criteria of value applicable to the registrant.

The foregoing amendments will be effective on August 1, 1973 and will apply to registration statements filed on or after that date, but not to registration statements filed before that date.

(Secs. 6, 17, 10, 19(a), 48 Stat. 78, 81, 85, Secs. 205, 209, 48 Stat. 906, 908, Sec. 8, 68 Stat. 695, Sec. 1, 79 Stat. 1051, 15 U.S.C. 77f, 77g, 77j, 77a(a))

By the Commission.

[SEAL] SHIRLEY E. HOLLIS,  
Recording Secretary.

JUNE 1, 1973.

[FR Doc.73-13109 Filed 6-28-73;8:45 am]

[Releases 33-5398, 34-10181, IA-377]

### PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

### PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

### PART 276—INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT ADVISERS ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

#### Obligations of Underwriters With Respect to Discretionary Accounts

In conjunction with amendments announced today by the Commission to require, *inter alia*, more meaningful disclosure with respect to certain new ventures,<sup>1</sup> the Commission is issuing this release to remind underwriters of the general obligations under the federal securities laws in connection with accounts of their customers over which they exercise investment discretion. The purpose of this release is to focus attention on the activities of underwriters of new issues. As a result of testimony adduced during the Commission's public investigation in the Matter of Hot Issues Securities Markets,<sup>2</sup> and the Commission's study of the securities markets conducted in 1963,<sup>3</sup> it appears that underwriters of new issues on occasion place such issues in the accounts of their customers over which these underwriters exercise investment discretion.

All brokers and dealers in securities assume certain obligations to their customers by virtue of the antifraud provisions of the federal securities laws,<sup>4</sup> and otherwise. These obligations depend in part, on the relationship between the broker-dealer and depend, in part, on the relationship between the broker-dealer and the customers involved. While discretionary accounts serve an important and needed function for small, as well as large, investors, brokers and dealers exercising investment discretion for their clients are fiduciaries<sup>5</sup> with the highest

obligation to deal fairly with these discretionary accounts.<sup>6</sup> Among the obligations imposed upon such fiduciaries is the requirement that they disclose any conflicts of interest they may have when effecting transactions for their discretionary accounts. The Commission and the courts have made clear that a potential conflict of interest arises where any broker or dealer having a self-interest with respect to a particular transaction or security also offers investment advice or exercises investment discretion with respect to that transaction or security.<sup>7</sup>

An underwriter of any offering has a self-interest in the success of that offering and in disposing of his commitment. The placement of a portion of that offering in discretionary accounts thus raises such a potential conflict of interest. It is a violation of the antifraud provisions of the federal securities laws if such an underwriter fails to make full and effective disclosure of this conflict to the customers involved. Full and effective disclosure, where the underwriter acts as a principal, generally will require disclosure to and the consent of its clients

not only that [the underwriter] proposes to deal with them for [its] own account but also of all other facts which may be material to the formulation of an independent opinion by the client as to the advisability of entering into the transaction.<sup>8</sup>

By the Commission.

[SEAL] SHIRLEY E. HOLLIS,  
Recording Secretary.

JUNE 1, 1973.

[FR Doc.73-13111 Filed 6-28-73;8:45 am]

<sup>1</sup> See, e.g., Arleen W. Hughes, 27 S.E.C. 629, 639 (1948), affirmed, Hughes v. Securities and Exchange Commission, 174 F. 2d 969 (C.A.D.C., 1949). Of course, any broker or dealer, whether dealing with discretionary or other accounts and whether or not dealing as principal with such accounts, represents that his customer "will be dealt with fairly, and in accordance with the standards of the profession." Duker & Duker, 6 S.E.C. 386, 388 (1939). Accord, Hanly v. Securities and Exchange Commission, 415 F. 2d 589 (C.A. 2, 1969); Charles Hughes & Co. v. Securities and Exchange Commission, 139 F. 2d 434 (C.A. 2, 1943), certiorari denied, 321 U.S. 766 (1944); G. Alex Hope, 7 S.E.C. 1082 (1940); Allender Co., Inc., 9 S.E.C. 1043 (1941); Jack Goldberg, 10 S.E.C. 975 (1942); William J. Stelmack Corp., 11 S.E.C. 601 (1942); J. Logan & Co., 41 S.E.C. 88 (1962).

<sup>2</sup> See e.g., Mason, Moran & Co., 35 S.E.C. 84, 89-90 (1953); Walter S. Grubbs, 28 S.E.C. 322 (1948); Norris & Hirschberg, Inc., 21 S.E.C. 865 (1946), affirmed, Norris & Hirschberg, Inc. v. Securities and Exchange Commission, 177 F. 2d 228 (C.A.D.C., 1949); Allender Co., Inc., 9 S.E.C. 1043 (1941); Affiliated Ute Citizens of Utah v. United States, 406 U.S. 128 (1972); Chasins v. Smith, Barney & Co., Inc., 438 F. 2d 1167 (C.A. 2, 1970).

<sup>3</sup> Arleen W. Hughes, 27 S.E.C. 629, 637 (1948), affirmed, Hughes v. Securities and Exchange Commission, 174 F. 2d 969 (C.A.D.C., 1949). See also, section 206(3) of the Investment Advisers Act.

<sup>4</sup> See Securities Act Release No. 5395 (June 1, 1973).

<sup>5</sup> Securities and Exchange Commission File No. 4-148.

<sup>6</sup> 1 Securities and Exchange Commission, Report of Special Study of Securities Markets, H.R. Doc. No. 95, 88th Cong., 1st Sess. 522-528, 554-555 (1963).

<sup>7</sup> See Sections 15(c)(1) and 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(c)(1) and 78j(b), as well as Rules 15c1-2, 15c1-6, 15c1-7 and 10b-5 promulgated thereunder, 17 CFR 240.15c1-2, 240.15c1-6, 240.15c1-7 and 240.10b-5, Section 17(a) of the Securities Act of 1933, 15 U.S.C. 77q(a), and Section 206(3) of the Investment Advisers Act of 1940, 15 U.S.C. 80b-6(3).

<sup>8</sup> See e.g., G. Alex Hope, 7 S.E.C. 1082, 1083 (1940); Norris & Hirschberg, Inc. v. Securities and Exchange Commission, 177 F. 2d 228 (C.A.D.C., 1949). See also, Hughes v. Securities and Exchange Commission, 174 F. 2d 969 (C.A.D.C., 1949).



[Release Nos. 33-5395, 34-10180]

**PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933****PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934****PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934****New Ventures; Meaningful Disclosure**

Notice of adoption of amendments to registration Forms S-1 (17 CFR 239.11) and S-2 (17 CFR 239.12) under the Securities Act of 1933 and to Forms 10 (17 CFR 249.210) 10-K (17 CFR 249.310) and 10-Q (17 CFR 249.308a) and rules 13a-13 (17 CFR 249.13a-13) and 15d-13 (17 CFR 249.15d-13) under the Securities Exchange Act of 1934: to require more meaningful disclosure with respect to all registrants; and to require more meaningful disclosure with respect to certain new ventures; to further conform the disclosure provisions of those Acts as they apply to all registrants and of other proposals.

The Securities and Exchange Commission (Commission) has adopted amendments to certain of its registration and reporting forms to require, among other things, more meaningful disclosure relating to all registrants, including information concerning the status of the development of new products and general competitive conditions, the position of the issuer in the industry in which it operates, and, in the case only of certain registrants offering securities to the public for the first time, a description of their plans of operation. The Commission believes that disclosure of such plans relating to new ventures is particularly necessary, since, generally there is an absence of historical information available to the public concerning such ventures in the form of reports filed with the Commission or published by financial services. In addition, investing in this type of venture may involve a greater risk of loss. Also, the Commission by adopting certain of these amendments has further conformed the disclosure requirements of the Securities Act of 1933 (Act) and the Securities Exchange Act of 1934 (Exchange Act) as they apply to all registrants by eliminating differences in the disclosure requirements among Forms S-1<sup>1</sup> [17 CFR 239.11] and S-2<sup>2</sup> [17 CFR 239.12] under the Act and 10<sup>3</sup> [17 CFR 249.210] and 10-K<sup>4</sup> [17 CFR 249.310] under the Exchange Act. The Commission also has adopted certain amendments to Rules 13a-13 [17 CFR 240.13a-13] and 15d-13 [17 CFR 240.15d-13] and Form 10-Q<sup>5</sup>

[17 CFR 249.308a] under the Exchange Act to delete the exemption for registrants in the promotional or development stage (other than mining companies) from filing quarterly reports on Form 10-Q and to amend that form to require such registrants to file certain financial statements.

These amendments to Forms S-1, S-2, 10, 10-K and 10-Q were proposed in Securities Act Release 5276 on July 26, 1972 [37 F.R. 16016] and in Exchange Act Release 9673 [37 F.R. 16023] on that date. For the convenience of registrants and those advising them a chart indicating the types of registrants to which the amendments apply is attached to this release.

Certain of these amendments are designed to result in disclosure of more meaningful information concerning all registrants and to communicate more effectively to the investing public the economic realities concerning new registrants. It should be noted that the proposed amendments to Form 10-K would only have required a description of material changes in the registrant's business that occurred in the last fiscal year. The description of business item in Form 10-K, as adopted, requires a brief description of the registrant's business, which is an existing requirement, and material changes in such business that occurred during the fiscal year. The Commission believes that retaining the requirement for a brief description of business will make reports on Form 10-K understandable without the need to refer to other forms or reports.

The amendments to 1933 Act registration forms and 1934 Act registration and reporting forms will require, as part of the description of all registrants' businesses, in addition to the required description of the business done and intended to be done and without limiting that requirement, specific disclosure in cases where the registrant proposes to enter or where it has recently entered a new line of business or introduced a new product involving the investment of a material amount of its assets. The amendments are not designed to require premature disclosure of confidential business information<sup>6</sup> or other information not previously publicly announced or otherwise made public which would result in significant competitive disadvantages to the issuer without corresponding benefits for investors. The Commission has determined not to adopt its proposal to require disclosure with respect to market studies, since, at this time, there are unresolved questions about the reliability of market studies generally. Moreover, the substance of the disclosure sought will be obtained by other requirements relating to product development and competition. Disclosure will be required

where the absence of any such study is material. Also such studies will continue to be required to be furnished supplementally, but not as a part of the registration statement or report. The staff will then be able to review such studies and suggest additional disclosure if appropriate.

With respect to disclosure of competitive conditions in the industry all registrants will be required to disclose, where available, more meaningful information concerning the methods of competition in the industry (e.g., price, service, warranty or product performance). This type of information is generally obtained by venture capitalists and underwriters in considering their investment decisions. The amendments require such information to be made available to the investing public. This disclosure requirement has been revised in light of comments to better define the circumstances under which such information is required to be disclosed. A registrant will not be required to disclose information concerning other companies in an industry if the registrant cannot obtain such information without unreasonable effort or expense or if such information is peculiarly within the knowledge of a person not affiliated with the registrant.

Where a company is filing for the first time on Form S-1, S-2 or Form 10, and such company (including predecessors) has not received revenues from operations for each of the three fiscal years immediately prior to the filing of the registration statement, the registrant's plan of operation for the remainder of the fiscal year or, if the registration statement is filed in the second half of the fiscal year, the registrant's plan through the first half of the next year, will be required to be described. This description will include a narrative statement indicating the registrant's opinion as to the period of time that the proceeds of the offering will satisfy its cash requirements and whether in the next six months the registrant will have to raise additional funds to meet the expenditures required for operating its business. The basis for such opinion will be required to be stated. In addition, where such narrative is based on a cash budget, such budget will be required to be furnished to the Commission as supplemental information, but not as a part of the registration statement.

The Commission has determined not to adopt at this time, but is not withdrawing, the proposal to require certain registrants to disclose in the registration statement cash budgets, if available. This proposal will be reconsidered in light of Securities Act Release 5362 (February 2, 1973) [38 FR 7220] announcing the Commission's determinations with respect to the filing of projection information and subsequent implementing releases, as well as experience in administering the new disclosure requirements. The Commission believes at present that registrants with limited track records may not have the experience, expertise or resources to prepare reliable cash budgets, particularly since such budgets are based, in part, on projection of sales or revenues,

<sup>1</sup> General form for registration of securities under the Act for which no other form is authorized or prescribed.

<sup>2</sup> Form for registration of securities under the Act of commercial and industrial companies in the development stage.

<sup>3</sup> General form for registration of securities pursuant to section 12 of the Exchange Act.

<sup>4</sup> General form for annual reports pursuant to section 13(a) of the Exchange Act.

<sup>5</sup> General form for quarterly reports pursuant to section 13a of the Exchange Act.

<sup>6</sup> In this connection, Rules 171 [17 CFR 230.171] (Disclosure Detrimental to the National Defense or Foreign Policy) and 485 [17 CFR 230.485] (Contracts in General under the Securities Act presently limit the disclosure of certain information).



and that the liability exposure resulting from use of unreliable budget information might restrict the raising of capital by such registrants. As it indicated in Release 33-5362, the Commission is considering proposing for comment a rule which would provide that where a projection has a reasonable basis and is carefully reviewed, liability under the federal securities laws would not result solely from the fact that actual results turn out to be different from projected results. The Commission's final determination with respect to such a rule would also affect its reconsideration of the proposal relating to cash budgets.

In light of the above, the Commission also determined not to adopt at this time, but is not withdrawing, the proposed amendments to Forms 10-Q and 10-K relating to updating of cash budgets for a period of two years.

In addition, since disclosure relating to the performance and background of management of the issuer is material to investment decisions, the Commission had adopted additional disclosure requirements in this area which apply to all registrants. The 10-year litigation history requirement pertaining to directors now contained in Form 10 and 10-K has been added to the corresponding items in Form S-1 and S-2 and broadened to cover executive officers in all those forms. The disclosure required concerning officers and directors will be standardized in the foregoing forms and additional explanation will be required as to the nature of the responsibilities of these individuals in prior positions. In addition, registrants which are not subject to the reporting provisions of the Exchange Act will be required to disclose in Forms 10, S-1 and S-2 the experience of certain key persons such as research scientists and production and sales managers, who, although not executive officers, are expected to make significant contributions to the business of the registrant. The proposed requirement for disclosure of salaries of officers and directors during previous employment has not been adopted, since public comments indicated that it would not provide meaningful information to investors and that it would result in personnel problems.

Further, in order to provide material information to investors concerning certain practices which may affect after-market trading in securities that are being offered, the items in Forms S-1 and S-2 relating to the plan for the distribution of the securities to be registered by companies not subject to the periodic reporting provisions of sections 13(a) and 15(d) of the Exchange Act, have been amended to require disclosure of the principal underwriters' intentions to confirm sales to their discretion-

ary accounts.<sup>7</sup> In addition to the disclosure required in the registration statement, the Commission, as discussed in Securities Act Release No. 5398 [38 F.R. 17201], issued today, cautions underwriters that full and effective disclosure, where the underwriter act as a principal, generally will require disclosure to and the consent of its clients.

All first time registrants will also be required to undertake on Form S-1 or S-2 to provide to underwriters certificates for the securities to be offered in such a manner as to permit prompt delivery by underwriters to purchasers. The obligation to deliver such securities remains that of the underwriter. The underwriter will be required to indicate in connection with a request for acceleration that the issuer has been requested to provide certificates to the underwriter to permit prompt delivery to purchasers. Although this requirement for notification was not proposed for comment, the Commission finds it is not a substantive disclosure requirement and that it merely relates to advice which should be given to the Commission for its information to assist in administering the securities laws and publication for comment is not required pursuant to the Administrative Procedures Act.

Current financial information with respect to companies in the promotional or development stage is of material importance. Consequently, Rules 13a-13 and 15d-13 under the Exchange Act have been amended to delete that part of subparagraph (b)(5) of each rule which presently exempts such companies from filing quarterly reports on Form 10-Q. The exemption for certain mining companies in the promotional or development stage remains. Form 10-Q has

<sup>7</sup> Testimony during the Commission's Public Investigation in the Matter of the Hot Issues Securities Markets (File No. 4-148) indicates that underwriters of securities of new ventures may confirm sales of a material portion of the securities offered to their discretionary accounts. The Special Study of Securities Markets noted that underwriters restricted the supply of new issues by, among other methods, allotting securities to discretionary accounts. Report of Special Study of Securities Markets of the Securities and Exchange Commission, Part I at 555 (1963). More recently, a study of hot issues prepared for the Attorney General of the State of New York pointed out that the purchase of new issues for discretionary accounts gave the underwriter a large degree of effective trading control and recommended "that consideration should be given to prohibitions or limitations on the sale of new issue securities to discretionary accounts controlled by the underwriter in a manner that could easily result in the manipulation of the market for the new issue." A Report to the Attorney General of the State of New York at 9, 37-38 (1969).

been amended to require that companies in the promotional or development stage submit the financial statements required by Rules 5A-02 [17 CFR 210.5a-02] and 5A-06 [17 CFR 210.5a-06] of Regulation S-X [17 CFR 210.1-01 et seq.] in lieu of those called for by Parts A and B of the form. As originally proposed for comment, those financial statements would have also included those required by Rules 5A-03, [17 CFR 210.5a-03] 5A-04 [17 CFR 210.5a-04] and 5A-05 [17 CFR 210.5a-05] of Regulation S-X. Such financial statements will not be required by the amendment as adopted, because the Commission believes that they would not provide benefits to investors commensurate with the burdens which would be imposed on registrants in preparing such statements.

**Commission action.** Pursuant to authority set forth in sections 6, 7, 10 and 19(a) of the Securities Act of 1933, as amended, the Securities and Exchange Commission hereby amends §§ 239.11 and 239.12 of Chapter II of Title 17 of the Code of Federal Regulations all as set forth below: 1. § 239.11 [Form S-1]—Items 2, 9, 16 and 17 of § 239.11 of Chapter II of Title 17 of the Code of Federal Regulations would be amended as follows:

**Item 2. Plan of distribution.**

The following new paragraph (d) is added to item 2:

(d) If the registrant was not, immediately prior to the filing of the registration statement, subject to the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, identify any principal underwriter that intends to confirm sales to any accounts over which it exercises discretionary authority and include an estimate of the amount of securities so intended to be confirmed.

**Instruction.** The response to this item shall be contained in a pre-effective amendment which will be circulated if the information is not available when the registration statement is filed.

**Item 9. Description of business.**

(a) Describe the business done and intended to be done by the registrant and its subsidiaries and the general development of such business during the past five years, or such shorter period as the registrant may have been engaged in business. The description shall include information as to matters such as the following:

(1) Competitive conditions in the industry or industries involved and the competitive position of the registrant, if known or reasonably available to the registrant. If several products or services are involved, separate consideration shall be given to the principal products or services or classes of products or services. (Formerly Item 9(e).)

(2) If a material part of the business is dependent upon a single customer or a few customers, the loss of any one or more of



whom would have a materially adverse effect on the business of the registrant, the name of the customer or customers, their relationship, if any, to the registrant and material facts regarding their importance to the business of the registrant. (Formerly Item 9(c).)

(3) The principal products produced and services rendered by the registrant, the principal markets for, and methods of distribution of, such products and services, including any significant changes in the kinds of products produced or services rendered, or in the markets or methods of distribution, during the past three fiscal years.

(4) To the extent that information concerning backlog is material to an understanding of the business of the registrant, the dollar amount of backlog orders believed to be firm, as of a recent date and as of a comparable date in the preceding fiscal year, together with an indication of the portion thereof not reasonably expected to be filled within the current fiscal year, and seasonal or other material aspects of the backlog.

(5) The sources and availability of raw materials essential to the business.

(6) The importance to the business and the duration and effect of, all material patents, trade marks, licenses, franchises and concessions held.

(7) (a) The estimated dollar amount spent during each of the last two fiscal years on material research activities relating to the development of new products or services or the improvement of existing products or services, indicating those activities which were company-sponsored and/or those which were customer-sponsored.

(b) In addition to the description of the business done and intended to be done required by paragraph 9(a) and without limiting that requirement, if there has been a public announcement of, or if information otherwise has become public about, a new product or line of business requiring the investment of a material amount of total assets, a description of the status of such product or line (e.g., whether in the planning stage, whether prototypes exist, the degree to which product design has progressed or whether further engineering is necessary).

(c) Where material, state the approximate number of employees engaged fulltime in each of the activities described in (a) above during each fiscal year and in (b) above.

**NOTE:** Item 9(a) (7) (b) requires a description of the status of product development in addition to the description of the business done and intended to be done required by paragraph 9(a). Item 9(a) (7) (b) is not intended to require disclosure of otherwise non-public corporate information the disclosure of which would adversely affect the registrant's competitive position. Paragraph (a) requires disclosure of financial information relating to research and development activities. Subparagraph (b) is intended to elicit additional specific information only where there has been a public announcement or where information has otherwise become public concerning a new product or line of business requiring the investment of a material amount of total assets.

(8) The number of persons employed by the registrant.

(9) The extent to which the business of the registrant or a material portion thereof is or may be seasonal.

**Instructions.** 1. If the registrant proposes to enter, or has recently entered or introduced a new line of business or product requiring the investment of a material amount of its total assets, provide as supplemental information at the time of filing of the registration statement, but not as a part thereof, a copy of any studies conducted or performed by or for the registrant relating to such busi-

ness or product as required by Guide 42 of the Guides for the Preparation and Filing of Registration Statements [33 P.R. 18617], and a statement as to the actual or proposed use of such study. If any such study is not available at the time of filing, it should be provided as soon thereafter as practicable. Where material, disclosure in the registration statement of the absence of such a study is required.

2. The principal methods of competition (e.g., price, service, warranty or product performance) should be identified and positive and negative factors pertaining to the competitive position of the registrant, to the extent that they exist, should be explained if known or reasonably available to the registrant. An estimate of the number of competitors should be included, and, where material, the particular markets in which the registrant competes should be identified. Where one or a small number of competitors are dominant, they should be identified.

3. Where material to understanding the registrant's business, the registrant's and industry practices and conditions as they relate to working capital items should be explained (e.g., where the registrant's business is highly seasonal; where the registrant is required to carry significant amounts of inventory to meet rapid delivery requirements of customers or to assure itself of a continuous allotment of goods from suppliers; or where the registrant has provided extended payment terms to customers).

4. The description shall not relate to the powers and objects specified in the charter, but to the actual business done and intended to be done. Include the business of subsidiaries and affiliates of the registrant insofar as is necessary to understand the character and development of the business conducted by the total enterprise. (Formerly Instruction 1 to Item 9(a).)

5. Disclosure relating to environmental matters—No Change.

6. In describing developments, information shall be given as to matters such as the following: the nature and results of any bankruptcy, receivership or similar proceedings with respect to the registrant or any of its significant subsidiaries; the nature and results of any other material reorganization, readjustment or succession of the registrant or any of its significant subsidiaries; the acquisition or disposition of any material amount of assets otherwise than in the ordinary course of business; and any material changes in the mode of conducting the business. (Formerly Instruction 2 to Item 9(a).)

7. The business of a predecessor or predecessors shall be deemed to be the business of the registrant for the purpose of this item. (Formerly Instruction 3 to Item 9(a).)

8. Appropriate disclosure shall be made with respect to any material portion of the business which may be subject to renegotiation of profits or termination of contracts or subcontracts at the election of the Government. (Formerly Instruction 4 to Item 9(a).)

**NOTE:** The following instruction (9) applies only to registrants filing a registration statement under the Securities Act for the first time, who (including predecessors) have not received revenues from operations for each of the three fiscal years immediately prior to the filing of the registration statement. No response is required if similar information has previously been filed for a prior period in a registration statement on Form 10 [17 CFR 249.210] effective under the Securities Exchange Act of 1934.

9. Describe, if formulated, the registrant's plan of operation for the remainder of the fiscal year, if the registration statement is filed prior to the end of the registrant's second fiscal quarter. Describe, if formulated,

the registrant's plan of operation for the remainder of the fiscal year and for the first six months of the next fiscal year, if the registration statement is filed subsequent to the end of the second fiscal quarter. If such information is not available, the reasons for its not being available should be stated. Disclosure relating to any plan should include such matters as:

(a) A statement in narrative form indicating the registrant's opinion as to the period of time that the proceeds from the offering will satisfy cash requirements and whether in the next six months it will be necessary to raise additional funds to meet the expenditures required for operating the business of the registrant. The basis for such opinion shall be set forth with specificity and categories of expenditures and sources of cash resources shall be identified. Amounts of expenditures and cash resources need not be provided. In addition, if the narrative statement is based on a cash budget, such budget should be furnished to the Commission as supplemental information, but not as a part of the registration statement.

(b) An explanation of material product research and development to be performed during the period covered by the plan, including, in addition to the description of the business done and intended to be done required by paragraph 9(a) and without limiting that requirement, where there has been a public announcement of or such information has otherwise become public about a new product or line of business requiring the investment of a material amount of total assets, a description of the status of such product or line (e.g., whether in the planning stage, whether prototypes exist, the degree to which product design has progressed or whether further engineering is necessary).

(c) Any anticipated material acquisition of plant and equipment and the capacity thereof.

(d) Any anticipated material changes in number of employees in the various departments such as research and development, production, sales or administration.

(e) Other material areas which may be peculiar to the registrant's business.

(b) Information As to Lines of Business. (No Change.)

(c) If the registrant and its subsidiaries engage in material operations in foreign countries, or if a material portion of sales or revenues is derived from customers in foreign countries, appropriate disclosure shall be made with respect to the importance of that part of the business to the registrant and the risks attendant thereto. Insofar as practicable, furnish information with respect to volume and relative profitability of such operations. (Formerly Item 9(f).)

(d) The Commission may, upon written request of the registrant, and where consistent with the protection of investors, permit the omission of any of the information herein required or the furnishing in substitution thereof of appropriate information of comparable character. The Commission may also require the furnishing of other information in addition to, or in substitution for, the information herein required in any case where such information is necessary or appropriate for an adequate description of the business done or intended to be done. (Formerly Item 9(f).)

#### Item 16. Directors and Executive Officers.

(a) List the names and ages of all directors of the registrant and all persons chosen to become directors; indicate all positions and offices with the registrant held by each such person; state his term of office as director and the period during which he has



served as such and briefly describe any arrangement or understanding between him and any other person pursuant to which he was selected as a director.

Instructions. 1. Do not include arrangements or understandings with directors or officers of the registrant acting solely in their capacities as such.

2. If any person chosen to become a director has not consented to act as such, so state. (Formerly Instruction 1 to Item 16.)

(b) List the names and ages of all executive officers of the registrant and all persons chosen to become executive officers; indicate all positions and offices with the registrant held by each such person; state his term of office as officer and the period during which he has served as such and briefly describe any arrangement or understanding between him and any other person pursuant to which he was selected as an officer.

Instructions. 1. Do not include arrangements or understandings with directors or officers of the registrant acting solely in their capacities as such.

2. If any person chosen to become an executive officer has not consented to act as such, so state. (Formerly Instruction 1 to Item 16.)

3. The term "executive officer" means the president, secretary, treasurer, any vice president in charge of a principal business function (such as sales, administration or finance) and any other person who performs similar policy making functions for the registrant. Where the registrant employs persons such as production managers, sales managers, or research scientists, who are not executive officers, but who make or are expected to make, significant contributions to the business of the registrant, such persons should be identified and their background disclosed to the same extent as in the case of executive officers. Such disclosure need not be made if the registrant was subject to section 13(a) or 15(d) of the Exchange Act, or was exempt from section 13(a) by section 12(g) (2) (G) of that Act, immediately prior to the filing of the registration statement.

(c) State the nature of any family relationship between any director or executive officer and any other director or executive officer.

Instruction. The term "family relationship" means any relationship by blood, marriage or adoption, not more remote than first cousin.

(d) Give a brief account of the business experience during the past 5 years of each director and each executive officer, including his principal occupations and employment during that period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. Where an executive officer has been employed by the registrant or a subsidiary of the registrant for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions to provide adequate disclosure of his prior business experience. What is required is information relating to the level of his professional competence which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

(e) Describe any of the following events which occurred during the past 10 years and which are material to an evaluation of the ability and integrity of any director or executive officer of the registrant:

(1) A petition under the Bankruptcy Act or any state insolvency law was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of, such person, or any partnership in which he was a general partner at or within two years before the time of

such filing, or any corporation or business association of which he was an executive officer at or within two years before the time of such filing;

(2) Such person was convicted in a criminal proceeding (excluding traffic violations and other minor offenses) or is the subject of a criminal proceeding which is presently pending; or

(3) Such person was the subject of any order, judgment or decree of any court of competent jurisdiction permanently or temporarily enjoining him from acting as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or firm engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security, or was the subject of any order of a Federal or state authority barring or suspending, for more than 60 days, the right of such person to be engaged in any such activity which order has not been reversed or suspended.

Instruction. If any event specified in paragraph (e) has occurred but information in regard thereto is omitted on the ground that it is not material, the registrant shall furnish, as supplemental information and not as a part of the registration statement, a description of the event and a statement of the reasons for the omission of information in regard thereto.

Item 17. Remuneration of directors and officers.

Paragraph (a) (1) of this item is revised as follows:

(a) \* \* \*

(1) Each director and each of the three highest paid officers of the registrant whose aggregate direct remuneration exceeded \$40,000, naming each such person.

(2) No change.

#### UNDERTAKINGS

The following undertaking D is added to the undertakings in § 239.11 (Form S-1):

D. The following undertaking should be included in the registration statement if equity securities are to be offered and the registrant has not previously sold securities registered under the Act:

The undersigned registrant hereby undertakes to provide to the underwriter at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser.

NOTE: Any request for acceleration should be accompanied by a representation from the underwriter that the registrant has been requested to provide sufficient certificates in such denominations as to permit prompt delivery.

II. § 239.12 (Form S-2)—Items 2 and 8 of § 239.12 of Chapter II of Title 17 of the Code of Federal Regulations would be amended as follows:

Item 2. Plan of distribution.

The following new subparagraph (d) is added to this item.

(d) If the registrant was not, immediately prior to the filing of the registration statement, subject to the requirements of Section 13(a) or 15(d) of the Securities Exchange

Act of 1934, identify any principal underwriter that intends to confirm sales to any accounts over which it exercises discretionary authority and include an estimate of the amount of securities so intended to be confirmed.

Instruction. The response to this item shall be contained in a pre-effective amendment which will be circulated if the information is not available when the registration statement is filed.

#### Item 4. Organization and business.

(a) State the year in which and the name of the state or other jurisdiction under the laws of which the registrant was incorporated, and describe the business done and intended to be done by the registrant and the general development of such business during the period that the registrant has been engaged in business. The description shall include information as to matters such as the following:

(1) Competitive conditions in the industry or industries involved and the competitive position of the registrant, if known or reasonably available to the registrant. If several products or services are involved, separate consideration shall be given to the principal products or services or classes of products or services.

(2) If a material part of the business is dependent upon a single customer or a few customers, the loss of any one or more of whom would have a materially adverse effect on the business of the registrant, the name of the customer or customers, their relationship, if any, to the registrant and material facts regarding their importance to the business of the registrant.

(3) The principal products produced and services rendered by the registrant, the principal markets for, and methods of distribution of, such products and services, including any significant changes in the kinds of products produced or services rendered, or in the markets or methods of distribution.

(4) To the extent that information concerning backlog is material to an understanding of the business of the registrant, the dollar amount of backlog of orders believed to be firm, as of a recent date and as of a comparable date in the preceding fiscal year, together with an indication of the portion thereof not reasonably expected to be filled within the current fiscal year, and seasonal or other material aspects of the backlog.

(5) The sources and availability of raw materials essential to the business.

(6) The importance to the business and the duration and effect of, all material patents, trade marks, licenses, franchises and concessions held.

(7) (a) The estimated dollar amount spent during each of the last two fiscal years on material research activities relating to the development of new products or services or the improvement of existing products or services indicating those activities which were company-sponsored and/or those which were customer-sponsored.

(b) In addition to the description of the business done and intended to be done required by paragraph 4(a) and without limiting that requirement, if there has been a public announcement of, or if information otherwise has become public about, a new product or line of business requiring the investment of a material amount of total assets, a description of the status of such product or line (e.g., whether in the planning stage, whether prototypes exist the degree to which product design has progressed or whether further engineering is necessary).

(c) Where material, state the approximate number of employees engaged fulltime in each of the activities described in (a) above during each fiscal year and in (b) above.



NOTE: Item 4(a) (7) (b) requires a description of the status of product development in addition to the description of the business done and intended to be done required by paragraph 4(a). Item 4(a) (7) (b) is not intended to require disclosure of otherwise nonpublic corporate information the disclosure of which would adversely affect the registrant's competitive position. Subparagraph (a) requires disclosure of financial information relating to research and development activities. Subparagraph (b) is intended to elicit additional specific information only where there has been a public announcement or where information has otherwise become public about a new product or line of business requiring investment of a material amount of total assets.

(8) The number of persons employed by the registrant.

(9) The extent to which the business of the registrant or a material portion thereof is or may be seasonal. (Formerly part of Item 4(d).)

Instructions. 1. If the registrant proposes to enter, or has recently entered or introduced a new line of business or product requiring the investment or a material amount of its total assets, provide as supplemental information at the time of filing of the registration statement, but not as a part thereof, a copy of any studies conducted or performed by or for the registrant relating to such business or product, as required by Guide 42 of the Guides for the Preparation and Filing of Registration Statements, and a statement as to the actual or proposed use of such study. If any such study is not available at the time of filing, it should be provided as soon thereafter as practicable. Where material, disclosure in the registration statement of the absence of such a study is required.

2. The principal methods of competition (e.g., price, service, warranty, or product performance) should be identified and positive and negative factors pertaining to the competitive position of the registrant, to the extent that they exist, should be explained, if known or reasonably available to the registrant. An estimate of the number of competitors should be included, and, where material, the particular markets in which the registrant competes should be identified. Where one or a small number of competitors are dominant, they should be identified.

3. Where material to understanding the registrant's business, the registrant's and industry practices and conditions as they relate to working capital items should be explained (e.g., where the registrant's business is highly seasonal; where registrant is required to carry significant amounts of inventory to meet rapid delivery requirements of customers or to assure itself of a continuous allotment of goods from suppliers; or where the registrant has provided extended payment terms to customers).

4. The description shall not relate to the powers and objects specified in the charter, but to the actual business done and intended to be done. Include the business of subsidiaries and affiliates of the registrant insofar as is necessary to understand the character and development of the business conducted by the total enterprise.

5. In describing developments, information shall be given as to matters such as the following: the nature and results of any bankruptcy, receivership or similar proceedings with respect to the registrant; the acquisition or disposition of any material amount of assets otherwise than in the ordinary course of business; and any material changes in the mode of conducting the business.

6. The business of a predecessor or predecessors shall be deemed to be the business of the registrant for the purpose of this item.

7. Appropriate disclosure shall be made with respect to any material portion of the business which may be subject to renegotiation of profits or termination of contracts or subcontracts at the election of the government.

NOTE: The following instruction (8) applies only to registrants filing a registration statement under the Securities Act for the first time, who (including predecessors) have not received revenues from operations for each of the three fiscal years immediately prior to the filing of the registration statement. No response is required if similar information has previously been filed for a prior period in a registration statement on Form 10 effective under the Securities Exchange Act of 1934.

8. Describe, if formulated, the registrant's plan of operation for the remainder of the fiscal year if the registration statement is filed prior to the end of the registrant's second fiscal quarter. Describe, if formulated, the registrant's plan of operation for the remainder of the fiscal year and for the first six months of the next fiscal year, if the registration statement is filed subsequent to the end of the second fiscal quarter. If such information is not available, the reasons for its not being available should be stated. Disclosure relating to any plan should include such matters as:

(a) A statement in narrative form indicating the registrant's opinion as to the period of time that the proceeds from the offering will satisfy cash requirements and whether in the next six months it will be necessary to raise additional funds to meet the expenditures required for operating the business of the registrant. The basis for such opinion shall be set forth with specificity and categories of expenditures and sources of cash resources shall be identified. Amounts of expenditures and cash resources need not be provided. In addition, if the narrative statement is based on a cash budget, such budget should be furnished to the Commission as supplemental information, but not as a part of the registration statement.

(b) An explanation of material product research and development to be performed during the period covered by the plan, including, in addition to the description of the business done and intended to be done required by paragraph 4(a) and without limiting that requirement, where there has been a public announcement of, or such information has otherwise become public about, a new product or line of business requiring the investment of a material amount of total assets, a description of the status of such product or line (e.g., whether in the planning stage, whether prototypes exist, the degree to which product design has progressed or whether further engineering is necessary).

(c) Any anticipated material acquisition of plant and equipment and the capacity thereof.

(d) Any anticipated material changes in number of employees in the various departments such as research and development, production, sales or administration.

(e) Other material areas which may be peculiar to the registrant's business.

(b) If the registrant engages in material operations in foreign countries, or if a material portion of sales or revenues is derived from customers in foreign countries, appropriate disclosure shall be made with respect to the importance of that part of the business to the registrant and the risks attendant thereto. Insofar as practicable, furnish information with respect to volume and relative profitability of such operations.

(c) The Commission may, upon written requests of the registrant and where consistent with the protection of investors, permit the omission of any of the information herein required or the furnishing in substitution therefor of appropriate information of comparable character. The Commission may also require the furnishing of other information in addition to, or in substitution for the information herein required in any case where such information is necessary or appropriate for an adequate description of the business done or intended to be done.

Item 8. Promoters, Directors and Officers.

(a) No change.

(b) List the names and ages of all directors of the registrant and all persons chosen to become directors; indicate all positions and offices with the registrant held by each such person; state his term of office as director and the period during which he has served as such and briefly describe any arrangement or understanding between him and any other person pursuant to which he was selected as a director.

(c) List the names and ages of all executive officers of the registrant and all persons chosen to become executive officers; indicate all positions and offices with the registrant held by each such person; state his term of office as officer and the period during which he has served as such and briefly describe any arrangement or understanding between him and any other person pursuant to which he was selected as an officer.

Instructions. 1. Do not include arrangements or understandings with directors or officers of the registrant acting solely in their capacities as such.

2. The term "executive officer" means the president, secretary, treasurer, any vice president in charge of a principal business function (such as sales, administration or finance) and any person who performs similar policy making functions for the registrant. Where the registrant employs persons such as production managers, sales managers, or research scientists, who are not executive officers, but who make or are expected to make, significant contributions to the business of registrant, such persons should be identified and their backgrounds disclosed to the same extent as in the case of executive officers. Such disclosure need not be made if the registrant was subject to section 13(a) or 15(d) of the Exchange Act or was exempt from section 13(a) by section 12(g)(2)(G) of that Act, immediately prior to the filing of the registration statement.

3. If any person chosen to become a director or executive officer has not consented to act as such, so state. (Formerly Instruction 1 to Item 8(b).)

(d) State the nature of any family relationship between any director or executive officer and any other director or executive officer.

Instruction. The term "family relationship" means any relationship, by blood, marriage or adoption, not more remote than first cousin.

(e) Give a brief account of the business experience during the past five years of each director and each executive officer, including his principal occupations and employment during that period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. Where an executive officer has been employed by the registrant or a subsidiary of the registrant for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual



in prior positions to provide adequate disclosure of his prior business experience. What is required is information relating to the level of his professional competence which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

(f) Describe any of the following events which occurred during the past 10 years and which are material to an evaluation of the ability and integrity of any director or executive officer of the registrant:

(1) A petition under the Bankruptcy Act or any state insolvency law was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of, such person, or any partnership in which he was a general partner at or within two years before the time of such filing, or any corporation or business association of which he was an executive officer at or within two years before the time of such filing;

(2) Such person was convicted in a criminal proceeding (excluding traffic violations and other minor offenses) or is the subject of a criminal proceeding which is presently pending; or

(3) Such person was the subject of any order, judgment or decree of any court of competent jurisdiction permanently or temporarily enjoining him from acting as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or firm engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security, or was the subject of any order of a Federal or state authority barring or suspending, for more than 60 days, the right of such person to be engaged in any such activity, which order has not been reversed or suspended.

Instruction. If any event specified in paragraph (f) has occurred but information in regard thereto is omitted on the ground that it is not material, the registrant shall furnish, as supplemental information and not as a part of the registration statement, a description of the event and a statement of the reasons for the omission of information in regard thereto.

#### UNDERTAKING TO DELIVER CERTIFICATES PROMPTLY

The following new undertaking is added to § 239.12 (Form S-2):

The following undertaking should be included in the registration statement if equity securities are to be offered and the registrant has not previously sold securities registered under the Act:

"The undersigned registrant hereby undertakes to provide to the underwriter at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser."

NOTE: Any request for acceleration should be accompanied by a representation from the underwriter that the registrant has been requested to provide sufficient certificates in such denominations as to permit prompt delivery.

Commission action: Pursuant to authority set forth in sections 12, 13(a), 15(d) and 23(a) of the Securities Exchange Act of 1934, as amended, the Securities and Exchange Commission hereby amends §§ 249.210, 249.310, 249.308a, 240.13a-13 and 240.15d-13 of

Chapter II of Title 17 of the Code of Federal Regulations all as set forth below:

I. § 249.210 (Form 10)—Items 1 and 6 of § 249.210 of Chapter II of Title 17 of the Code of Federal Regulations would be amended as follows:

#### Item 1. Business.

(a) State the year in which the registrant was organized and its form of organization (such as "a corporation," or "unincorporated association" or other appropriate statement).

(b) Describe the business done and intended to be done by the registrant and the general development of such business during the past 5 years, or such shorter period as the registrant may have been engaged in business. The description shall include information as to matters such as the following:

(1) Competitive conditions in the industry or industries involved and the competitive position of the registrant, if known or reasonably available to the registrant. If several products or services are involved, separate consideration shall be given to the principal products or services or classes of products or services. (Formerly paragraph (f) of Item 1.)

(2) If a material part of the business is dependent upon a single customer or a few customers, the loss of any one or more of whom would have a materially adverse effect on the business of the registrant, the name of the customer or customers, their relationship, if any, to the registrant and material facts regarding their importance to the business of the registrant. (Formerly paragraph (d) of Item 1.)

(3) The principal products produced and services rendered by the registrant, the principal markets for, and methods of distribution of, such products and services, including any significant changes in the kinds of products produced or services rendered, or in the markets or methods of distribution, during the past three fiscal years.

(4) To the extent that information concerning backlog is material to an understanding of the business of the registrant, the dollar amount of backlog of orders believed to be firm, as of a recent date and as of a comparable date in the preceding fiscal year, together with an indication of the portion thereof not reasonably expected to be filled within the current fiscal year, and seasonal or other material aspects of the backlog. (Formerly Instruction 5(a) to paragraph (b) of Item 1.)

(5) The sources and availability of raw materials essential to the business. (Formerly Instruction 5(b) to paragraph (b) of Item 1.)

(6) The importance to the business and the duration and effect of, all material patents, trade marks, licenses, franchises and concessions held. (Formerly Instruction 5(c) to paragraph (b) of Item 1.)

(7) (a) The estimated dollar amount spent during each of the last two fiscal years on material research activities relating to the development of new products or services or the improvement of existing products or services, indicating which were company sponsored and/or those which were customer-sponsored.

(b) In addition to the description of the business done and intended to be done required by paragraph 1(b) and without limiting that requirement, if there has been a public announcement of, or if information otherwise has become public about, a new product or line of business requiring the investment of a material amount of total assets, a description of the status of such product or line (e.g., whether in the planning stage, whether prototypes exist, the degree to which product design has progressed or whether further engineering is necessary).

(c) Where material, state the approximate number of employees engaged fulltime in each of the activities described in (a) above during each fiscal year and in (b) above. (Formerly Instruction 5(D) to paragraph (b) of Item 1.)

NOTE: Item 1(b) (7) (b) requires a description of the status of product development in addition to the description of the business done and intended to be done required by paragraph 1(a). Item 1(b) (7) (b) is not intended to require disclosure of otherwise non-public corporate information the disclosure of which would adversely affect the registrant's competitive position. Subparagraph (a) requires disclosure of financial information relating to research and development activities. Subparagraph (b) is intended to elicit additional specific information only where there has been a public announcement or where information has otherwise become public concerning a new product or line of business requiring the investment of a material amount of total assets.

(8) The number of persons employed by the registrant. (Formerly Instruction 5(E) to paragraph (b) of Item 1.)

(9) The extent to which the business of the registrant or a material portion thereof is or may be seasonal.

Instructions. 1. If the registrant proposes to enter, or has recently entered or introduced a new line of business or product requiring the investment of a material amount of its total assets, provide as supplemental information at the time of filing of the registration statement, but not as a part thereof, a copy of any studies conducted or performed by or for the registrant relating to such business or product, and a statement as to the actual or proposed use of such study. Where material, disclosure of the absence of such a study is required.

2. The principal methods of competition (e.g., price, service, warranty, or product performance) should be identified and positive and negative factors pertaining to the competitive position of the registrant, to the extent that they exist, should be explained, if known or reasonably available to the registrant. An estimate of the number of competitors should be included, and, where material, the particular markets in which the registrant competes should be identified. Where one or a small number of competitors are dominant, they should be identified.

3. Where material to understanding the registrant's business, the registrant's and industry practices and conditions as they relate to working capital items should be explained (e.g., where the registrant's business is highly seasonal; where the registrant is required to carry significant amounts of inventory to meet rapid delivery requirements of customers or to assure itself of a continuous allotment of goods from suppliers; or where the registrant has provided extended payment terms to customers).

4. The description shall not relate to the powers and objects specified in the charter, but to the actual business done and intended to be done. Include the business of subsidiaries and affiliates of the registrant insofar as is necessary to understand the character and development of the business conducted by the total enterprise. (Formerly Instruction 1 to paragraph (b) of Item 1.)

5. In describing developments, information shall be given as to matters such as the following: the nature and results of any bankruptcy, receivership or similar proceedings with respect to the registrant or any of its significant subsidiaries; the nature and results of any other material reorganization, readjustment or succession of the registrant or any of its significant subsidiaries; the acquisition or disposition of any material



amount of assets otherwise than in the ordinary course of business; and any material changes in the mode of conducting the business. (Formerly Instruction 2 to paragraph (b) of Item 1.)

6. (Disclosure relating to Environmental Matters)—No Change

7. The business of a predecessor or predecessors shall be deemed to be the business of the registrant for the purpose of this item. (Formerly Instruction 3 to paragraph (b) of Item 1.)

8. Appropriate disclosure shall be made with respect to any material portion of the business which may be subject to renegotiation of profits or termination of contracts or subcontracts at the election of the Government. (Formerly Instruction 4 to paragraph (b) of Item 1.)

NOTE: The following Instruction (9) applies only to registrants filing a registration statement on Form 10 (§ 249.310) for the first time, who (including predecessors) have not received revenues from operations for each of the three fiscal years immediately prior to the filing of the registration statement, unless similar information has previously been filed for prior periods in a registration statement on Forms S-1 (§ 239.11) or S-2 (§ 239.12) effective under the Securities Act of 1933.

9. Describe, if formulated, the registrant's plan of operation for the remainder of the fiscal year, if the registration statement is filed prior to the end of the registrant's second fiscal quarter. Describe, if formulated, the registrant's plan of operation for the remainder of the fiscal year and for the first six months of the next fiscal year, if the registration statement is filed subsequent to the end of the second fiscal quarter. If such information is not available, the reasons for its not being available shall be stated. Disclosure relating to any plan should include such matters as:

(a) An explanation of material product research and development to be performed during the period covered by the plan, including, in addition to the description of the business done and intended to be done required by paragraph 1(b) and without limiting that requirement, where there has been a public announcement of, or such information has otherwise become public about, a new product or line of business requiring the investment of a material amount of total assets, a description of the status of such product or line (e.g., whether in the planning stage, whether prototypes exist, the degree to which product design has progressed or whether further engineering is necessary).

(b) Any anticipated material acquisition of plant and equipment and the capacity thereof.

(c) Any anticipated material changes in number of employees in the various departments such as research and development, production, sales or administration.

(d) Other material areas which may be peculiar to the registrant's business.

(e) Information as to lines of business. (No change).

(d) If the registrant and its subsidiaries engage in material operations in foreign countries, or if a material portion of sales or revenues is derived from customers in foreign countries, appropriate disclosure shall be made with respect to the importance of that part of the business to the registrant and the risks attendant thereto. Insofar as practicable, furnish information with respect to volume and profitability of such operations. (Formerly paragraph (e) of Item 1.)

(e) The Commission may, upon written request of the registrant, and where con-

sistent with the protection of investors, permit the omission of any of the information herein required or the furnishing in substitution thereof of appropriate information of comparable character. The Commission may also require the furnishing of other information in addition to, or in substitution for, the information herein required in any case where such information is necessary or appropriate for an adequate description of the business done or intended to be done. (Formerly paragraph (g) of Item 1.)

#### Item 6. Directors and executive officers.

(a) List the names and ages of all directors of the registrant and all persons chosen to become directors; indicate all positions and offices with the registrant held by each such person; state his term of office as director and the period during which he has served as such and briefly describe any arrangement or understanding between him and any other person pursuant to which he was selected as a director.

Instruction. Do not include arrangements or understandings with directors or officers of the registrant acting solely in their capacities as such.

(b) List the names and ages of all executive officers of the registrant and all persons chosen to become executive officers; indicate all positions and offices with the registrant held by each such person; state his term of office as officer and the period during which he has served as such and briefly describe any arrangements or understanding between him and any other person pursuant to which he was selected as an officer.

Instructions. 1. Do not include arrangements or understandings with directors or executive officers of the registrant acting solely in their capacities as such.

2. The term "executive officer" means the president, secretary, treasurer, any vice president in charge of a principal business function (such as sales, administration or finance) and any other person who performs similar policy making functions for the registrant. Where the registrant employs persons such as production managers, sales managers, or research scientists, who make or are expected to make, significant contributions to the business of the registrant, such persons should be identified and their background disclosed to the same extent as in the case of executive officers.

(c) State the nature of any family relationship between any director or executive officer and any other director or executive officer.

Instruction. The term "family relationship" means any relationship by blood, marriage or adoption, not more remote than first cousin.

(d) Give a brief account of the business experience during the past five years of each director and each executive officer, including his principal occupations and employment during that period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. Where an executive officer has been employed by the registrant or a subsidiary of the registrant for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions to provide adequate disclosure of his prior business experience.

What is required is information relating to the level of his professional competence which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

(e) Describe any of the following events which occurred during the past ten years

and which are material to an evaluation of ability and integrity of any director or executive officer of the registrant:

II. § 249.310 (Form 10-K)—Items 1, 8 and 12 of § 249.310 of Chapter II of Title 17 of the Code of Federal Regulations would be amended as follows:

#### Item 1. Business.

(a) Identify the principal products produced and services rendered by the registrant and its subsidiaries, and the principal markets for, and methods of distribution of, such products and services. Briefly describe any significant changes in the kinds of products produced or services rendered, or in the markets or methods of distribution, since the beginning of the fiscal year.

(b) Describe any material changes and developments since the beginning of the fiscal year in the business done and intended to be done by the registrant and its subsidiaries. The description shall include information as to matters such as the following:

(1) Competitive conditions in the industry or industries involved and the competitive position of the registrant if known or reasonably available to the registrant. If several products or services are involved, separate consideration shall be given to the principal products or services or classes of products or services. (Formerly paragraph (b)(1) of Item 1.)

(2) If a material part of the business is dependent upon a single customer or a few customers, the loss of any one or more of whom would have a materially adverse effect on the business of the registrant, the name of the customer or customers, their relationship, if any, to the registrant and material facts regarding their importance to the business of the registrant. (Formerly paragraph (d) of Item 1.)

(3) To the extent that information concerning backlog is material to an understanding of the business of the registrant, the dollar amount of backlog of orders believed to be firm, as of the end of the registrant's fiscal year, and as of the end of the preceding fiscal year, together with an indication of the portion thereof not reasonably expected to be filled within the current fiscal year and seasonal or other material aspects of the backlog. (Formerly paragraph (b)(2) of Item 1.)

(4) The sources and availability of raw materials essential to the business. (Formerly paragraph (b)(3) of Item 1.)

(5) The importance to the business and the duration and effect of, all material patents, trademarks, licenses, franchises and concessions held. (Formerly paragraph (b)(4) of Item 1.)

(6) (a) The estimated dollar amount spent during each of the last two fiscal years on material research activities relating to the developments of new products or services or the improvement of existing products or services, indicating those activities which were company-sponsored and/or those which were customer-sponsored.

(b) If there has been a public announcement of, or if information otherwise has become public about, a new product or line of business requiring the investment of a material amount of total assets, description of the status of such product or line (e.g., whether in the planning stage, whether prototypes exist, the degree to which product design has progressed or whether further engineering is necessary).

(c) Where material, state the approximate number of employees engaged fulltime in each of the activities described in (a) above during each fiscal year and in (b).



NOTE: Item 16(b) is not intended to require disclosure of otherwise non-public corporate information the disclosure of which would adversely affect the registrant's competitive position. Subparagraph (a) requires disclosure of financial information relating to research and development activities. Subparagraph (b) is intended to elicit additional specific information only where there has been a public announcement or where information has otherwise become public about a new product or line of business requiring the investment of a material amount of total assets.

(7) (Disclosure relating to environmental matters)—No Change.

(8) The number of persons employed by the registrant. (Formerly paragraph (b) (6) of Item 1.)

(9) The extent to which the business of the registrant or a material portion thereof is or may be seasonal.

Instructions. 1. If the registrant proposes to enter, or has recently entered or introduced a new line of business or product requiring the investment of a material amount of its total assets, provide as supplemental information, but not as a part of the report, a copy of any market studies conducted or performed by or for the registrant relating to such business or product and a statement as to the actual or proposed use of such study. Where material, disclosure in the report of the absence of such a study is required.

2. The principal methods of competition (e.g., price, service, warranty, or product performance), should be identified and positive and negative factors pertaining to the competitive position of the registrant, to the extent that they exist, should be explained, if known or reasonably available to the registrant. An estimate of the number of competitors should be included, and, where material, the particular markets in which the registrant competes should be identified. Where one or a small number of competitors are dominant, they should be identified.

3. Where material to understanding the registrant's business, the registrant's and industry practices and conditions as they relate to working capital items should be explained (e.g., where the registrant's business is highly seasonal; where the registrant is required to carry significant amounts of inventory to meet rapid delivery requirements of customers or to assure itself of a continuous allotment of goods from suppliers; or where the registrant has to provide extended payment terms to customers).

4. The description shall not relate to the powers and objects specified in the charter, but to the actual business done and intended to be done. Include the business of subsidiaries and affiliates of the registrant insofar as is necessary to understand the character and development of the business conducted by the total enterprise.

5. In describing developments, information shall be given as to matters such as the following: the nature and results of any bankruptcy, receivership or similar proceedings with respect to the registrant or any of its significant subsidiaries; the nature and results of any other material reorganization, readjustment or succession of the registrant or any of its significant subsidiaries; the acquisition or disposition of any material amount of assets otherwise than in the ordinary course of business; and any material changes in the mode of conducting the business.

6. The business of a predecessor or predecessors shall be deemed to be the business of the registrant for the purpose of this item.

7. Appropriate disclosure shall be made with respect to any material portion of the

business which may be subject to renegotiation of profits or termination of contracts or subcontracts at the election of the Government.

(c) Information as to Lines of Business [Formerly Item 1(g)] (No Change).

(d) If the registrant and its subsidiaries engage in material operations in foreign countries, or of a material portion of sales or revenues is derived from customers in foreign countries, appropriate disclosure shall be made with respect to the importance of that part of the business to the registrant and the risks attendant thereto. Insofar as practicable, furnish information with respect to volume and relative profitability of such operations. (Formerly paragraph (e) of Item 1.)

(e) The Commission may, upon written request of the registrant and where consistent with the protection of investors, permit the omission of any of the information herein required or the furnishing in substitution thereof of appropriate information of comparable character. The Commission may also require the furnishing of other information in addition to, or in substitution for, the information herein required in any case where such information is necessary or appropriate for an adequate description of the business done or intended to be done. (Formerly paragraph (f) of Item 1.)

Item 8. Executive Officers of the Registrant.

(a) List the names and ages of all executive officers of the registrant and all persons chosen to become executive officers; state the nature of any family relationship between them, indicate all positions and offices with the registrant held by each such person; state his term of office as officer and the period during which he has served as such and briefly describe any arrangement or understanding between him and any other person pursuant to which he was selected as an officer.

Instructions. 1. Do not include arrangements or understandings with directors or officers of the registrant acting solely in their capacities as such.

2. The term "executive officer" means the president, secretary, treasurer, any vice president in charge of a principal business function (such as sales, administration or finance) and any other person who performs similar policy making functions for the registrant.

3. The term "family relationship" means any relationship by blood, marriage or adoption, not more remote than first cousin.

(b) Give a brief account of the business experience during the past five years of each executive officer, including his principal occupations and employment during that period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on. Where an executive officer has been employed by the registrant or a subsidiary of the registrant for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions to provide adequate disclosure of his prior business experience. What is required is information relating to the level of his professional competence, which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

Item 12. Directors of the Registrants.

NOTE: Paragraph (c) of Item 12 also applies to executive officers of the registrant.

(a) List the name and age of each director of the registrant, the date on which his present term of office will expire and the nature of all other positions and offices with the registrant presently held by him. The same

information shall be provided with respect to each person chosen to become a director.

(b) If not previously reported, state the nature of any family relationship between each such director and any other director or any executive officer of the registrant and give a brief account of his business experience during the past five years, including his principal occupations and employment during that period and the name and principal business of any corporation or other organization in which such occupation or employment was carried on. Where a person has been on the registrant's board for less than five years, a brief explanation should be included as to the nature of the responsibilities undertaken by the individual in prior positions to provide adequate disclosure of his prior business experience. What is required is information relating to the level of his professional competence and experience.

(c) Describe any of the following events which have occurred during the past 10 years and which are material to an evaluation of the ability and integrity of any director or executive officer of the registrant:

Instructions. 1. Instruction 2 to Item 8. Instructions. 1. Instruction 2 to Item 8 shall also apply to this item.

2. If any event specified in paragraph (c) has occurred but information in regard thereto is omitted on the ground that it is not material, the registrant shall furnish, as supplemental information and not as a part of this report, a description of the event, and a statement of the reasons for the omission of information in regard thereto.

III. § 249.308a [Form 10Q—Instruction H, paragraph (a) of § 249.310 of Chapter II of Title 17 of the Code of Federal Regulations is amended to add the following paragraph:

(a) \* \* \* Where a company is in the promotional or development stage to which paragraph (b) of Rule 5A-01 of Article 5A of Regulation S-X [17 CFR 210.5a-01] is applicable, the information specified in Rules 5A-02 [17 CFR 210.5a-02] and 5A-06 [17 CFR 210.5a-06 of Regulation S-X [17 CFR 210.1-01 et seq.] shall be furnished for the above periods in lieu of the information called for by Parts A and B below.

IV. § 240.13a-13—Paragraph (b) of § 240.13a-13 of Chapter II of Title 17 of the Code of Federal Regulations is amended to delete part of subparagraph 5 as follows:

(b) Quarterly reports on Form 10-Q [17 CFR 249.308a] need not be filed by the following issuers:

(1) Companies in the promotional or development stage to which paragraph (c) of § 210.5a-01 of this chapter is applicable.

All of the above amendments will take effect on August 1, 1973 and will apply with respect to filings on Forms S-1 [17 CFR 239.11], S-2 [17 CFR 239.12] or 10 [17 CFR 249.210] made on or after that date and to filings of Forms 10-K [17 CFR 249.310] and 10-Q [17 CFR 249.308a] for periods ending on or after that date. The amendments will not apply to filings made on those forms prior to that date.



(Secs. 6, 7, 10, 19(a), 48 Stat. 78, 81, 85, Secs. 205, 209, 48 Stat. 906, 908, Sec. 8, 68 Stat. 685, Sec. 1, 79 Stat. 1051, 15 U.S.C. 77(f), 77(g), 77(j), 77s(a); Secs. 12, 13(a), 15(d), 23(a), 48 Stat. 892, 894, 895, 901, Secs. 1, 203(a), 8, 49 Stat. 1375, 704, 1379, Sec. 202, 68 Stat. 686, Secs. 3, 4, 78 Stat. 565-568, 569, Sec. 1, 82 Stat.

454, Sec. 28(c), 84 Stat. 1435, 15 U.S.C. 78 f, 78m(a), 78d(d), 78w(a).)

By the Commission.

[SEAL]

SHIRLEY E. HOLLIS,  
Recording Secretary.

JUNE 1, 1973.

#### SUMMARY CHART OF AMENDMENTS

	Type of Registrant to which Amendments Apply			
	Certain Registrants Who are Filing for the First Time on Forms 8-1, 8-2 and 10	Registrants Not Subject to 13(a) or 15(d) of the Exchange Act	All Registrants Forms 8-1, 8-2	All Registrants Forms 10 or 10-K
1) FORM AMENDMENTS*—Disclosure Relating To:				
a) Market Studies and Product Development	X	X	X	X
b) Competitive Conditions	X	X	X	X
c) Plan of Operation	X	X	X	X
d) Management**	X	X	X	X
e) Undertaking to Promptly Deliver Certificates to Underwriters (Form 8-1 or 8-2)	X	X	X	X
f) Disclosure of Intentions to Confirm Sales to Discretionary Accounts (Form 8-1 or 8-2)	X	X	X	X
2) REGULATION A AMENDMENTS				
3) AMENDMENTS TO 1933 ACT GUIDES				
a) Prospectus Summary***	X	X	X	X
b) Underwriters' Investigation	X	X	X	X
c) Guide 5—"Stock Phrases" or "Boiler Plate"	X	X	X	X
d) Guide 5—Disclosure of Estimated Offering Price	X	X	X	X

\*Also Form 10-Q would be amended to require certain financial reports from companies in promotional and development stage.

\*\*Disclosure with respect to important operating managers would only apply to registrants not subject to Sections 13(a) or 15(d) of the Exchange Act.

\*\*\*Summary financial information only required of registrants on Form 8-1.

[FR Doc. 73-13108 Filed 6-28-73; 8:45 am]

#### Title 20—Employees' Benefits

#### CHAPTER III—SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Reg. No. 5]

#### PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED

#### Payment for Services in Connection With Kidney Transplant and Renal Dialysis Provided to Entitled Beneficiaries

Section 299I of P.L. 92-603 extends Medicare protection against the cost of chronic renal disease (CRD) to virtually the entire population. The legislation authorizes the Secretary to limit reimbursement to facilities meeting such requirements as he may prescribe by regulation. In view of the new issues that stem from the virtually universal coverage of a very complex service, the absence of prior experience, and possible precedents that the regulations may establish, final decisions on Medicare payment and facility qualification policies will require careful study and reevaluation based upon operating experience. Operations on July 1, 1973, are to be based upon interim regulations.

Section 299I also requires that the regulations to be promulgated include minimum utilization rates, which are associated both with cost of operation and quality of performance, which is generally superior when staff is well-practiced, and a provision for a medical review board to screen the appropriateness of patients for the proposed treatment procedures. The final regulations, when promulgated, will provide for such rates and review boards. In addition, the

final requirements for participation in the program will provide that facilities have affiliations which tie them in with the various modalities of treatment so as to support the development of an organized effective system of delivery of treatment of CRD. Authority for participation by a facility on an interim basis should not be construed to imply that it will be approved on a permanent basis for participation in the program. When the selection of qualifying facilities under the final conditions is made, it is expected that those not qualifying will be phased out with a minimum of interruption in the continuity of service. In addition, interim reimbursement levels and mechanisms to be employed should not be construed to reflect the final policies which will be adopted and which are expected to contain additional features providing incentives for effective and efficient performance. During the interim period, limits will be applied to reimbursement amounts and services covered beyond which payment will be made, i.e., will be considered reasonable and necessary, only if adequate justification is provided. Subject to requirements described below, facilities which were in operation in the performance of CRD treatment on June 1, 1973, will be reimbursed under the program during the interim period for services which are not increased substantially; additional facilities will be qualified to participate and substantial additions to services will be allowed for reimbursement on an exceptions basis. Those facilities which have not provided transplantation or chronic maintenance dialysis prior to June 1, 1973, or which have expanded or con-

template substantial expansion of services after June 1, 1973, will in addition, be reviewed during the interim period to determine whether their entry into this field is consistent with the criteria described below, which include principles expected to be encompassed in final conditions of participation.

With respect to transplantation, these criteria and principles include the following: (1) The facility is participating in the Medicare program; (2) it can reasonably be expected to perform a sufficient number of transplants per year and otherwise demonstrates a capacity to perform with high quality; (3) it makes a needed contribution to access of care in an area; (4) it contributes to a coordinated system of care by its arrangements for cooperation with other facilities in the area offering the same or other modalities of care for end-stage renal disease patients so that patients should be placed in the appropriate site and receive the appropriate service; (5) its costs of performance are expected to conform with the norms for the services it provides; and (6) its capital expenditures for this service have not been disapproved by a State agency designated in accordance with section 1122 of title XI of the Social Security Act. During the period immediately after June 1, 1973, special consideration for participation will be given to a facility that has prior to June 1, 1973, made a substantial investment of time, study, and resources in preparation for provision of the services in question.

Subject to the above caveat transplant hospitals which are currently participating in the Medicare program will continue to be reimbursed in the interim period for renal transplantation until conditions of participation are promulgated and applied.

With respect to chronic maintenance dialysis facilities, the criteria and principles include the following: (1) The facility is expected to meet an acceptable utilization rate and otherwise demonstrates a capacity to perform at high quality; (2) the facility makes a needed contribution to access of care; (3) the facility makes a positive contribution to the total system of care of CRD by working in cooperation with other sites and modalities of care; (4) the facility has arrangements for a patient review mechanism to assure that all patients are screened for the appropriateness of their treatment modality—including suitability for transplant and home dialysis; (5) the cost (or charge) of the service offered by the facility is in conformity with norms of costs (or charges) for similar services; and (6) its capital expenditures for this service have not been disapproved by a State agency designated in accordance with section 1122 of title XI of the Social Security Act. During the period immediately after June 1, 1973, special consideration for participation will be given to a facility that, prior to June 1, 1973, had made a substantial investment of time, study, and resources in preparation for provision of the services in question.